

IT 01-14

Tax Type: Income Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

v.

ABC, INC.

) 01 IT 0000
) 00-0000000
) 1/Q/99-4/Q/99
)
) Mimi Brin
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Rickey A. Walton, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

On February 16, 2001, the Illinois Department of Revenue ("Department") issued a Notice of Deficiency to ABC, Inc. ("Taxpayer" or "ABC") for late payment penalties and statutory interest thereon, based upon taxpayer's failure to pay, quarter monthly, its withholding tax liability to the State for the period of 1/Q/99 through 4/Q/99. Taxpayer paid its withholding tax liability on a monthly basis during this period. The Department advised taxpayer, in May 2000, that it was incorrectly making its withholding payments, as quarter monthly payments were required based upon the amount of wages withheld from its employees. Following this, the taxpayer paid its liabilities quarter monthly.

A hearing on this matter was held whereat taxpayer appeared through its President, William E. Thomas, and its certified public accountant, XXX. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the taxpayer. In support of this recommendation, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Deficiency, for a late payment penalty of \$17,085.69 as well as for statutory interest thereon for the period of 1/Q/99 through 4/Q/99. Department Ex. No. 1
2. For the period at issue, taxpayer withheld compensation from its employees pursuant to the Illinois Income Tax Act, 35 **ILCS** 5/101 *et seq.* ("IITA") Department Ex. No. 1
3. For the period at issue, taxpayer made payments of its withholding tax liability with the State on a monthly basis. Taxpayer Ex. No. 1 (April 20, 2001 letter from XXX & Associates, P.C.)
4. For the period at issue, taxpayer timely filed its IL-941 and its full withholding tax liability was paid each month. Tr. *passim*
5. Taxpayer's outside accountant prepared taxpayer's quarterly and year end taxes. Department Ex. No. 2 (March 14, 2000 letter to Melody Lyons from XXX & Associates, P.C.)

6. Taxpayer began making quarter monthly payments of its withholding tax liabilities once advised to do so by the Department early in 2000.¹

Taxpayer Ex. No. 1; Tr. pp. 12-13

Conclusions of Law:

Taxpayer's responsibility for Illinois withholding tax is found in article 7 of the Income Tax Act. 35 ILCS 5/701 *et seq.* Section 704 addresses the time by which an employer must pay its withholding tax liabilities. Specifically, the Act provides that if the aggregate amount of wages deducted and withheld by the employer exceeds \$1,000 for a quarter monthly period, payments of those withholdings must be made quarter monthly. *Id.* at 5/704 (b) Under section 5/704 (c), if withholdings for a month are between \$500 and \$1,000, then payment of the withholdings to the State are to be made monthly.

There is nothing of record to indicate that taxpayer was filing or paying its withholding liabilities incorrectly prior to the first quarter of 1999. The record indicates that taxpayer's business increased in 1999, with a corresponding increase in employee withholdings. The evidence provides that taxpayer, doing its own ordinary payroll and tax payments, continued to make full payments of its withholdings on a monthly basis. Thus, full and correct tax payment was not an issue herein.

However, it is clear that taxpayer was required, during the period at issue, to make its withholding tax payments quarter monthly, and, that once advised of this, immediately corrected its procedures to comply. Accordingly, the question to be decided

¹ Mr. XXX stated that the first notice to taxpayer regarding this issue was received in February, 2000, and that taxpayer corrected its filing method at that time. Taxpayer Ex. No. 1 Mr. Thomas stated that it

is whether reasonable cause exists to abate the late payment penalty statutorily assessed for the period prior to taxpayer's change in the frequency of its withholding tax payments.

Pursuant to the Uniform Penalty and Interest Act, 35 **ILCS** 735/3-1 *et seq.*, (“UPIA”) a penalty of 20% of the tax required to be shown due on a return is imposed for failure to pay the tax on or before the due date prescribed for payment. *Id.* at 735/3-3 (b-5). The Department assessed this penalty in this instance.

The UPIA also provides that penalties will not be imposed if the taxpayer shows that its failure to pay timely is due to reasonable cause. *Id.* at 735/3-8 In furtherance of this provision, the Department promulgated regulations concerning the abatement of certain penalties for reasonable cause. These regulations are found in section 700.400 of the Illinois Administrative Code, 86 Ill. Admin. Code, ch. I, section 700.400. Specifically, these regulations provide, in pertinent part:

- b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.
- c) A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return.

- d) The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability. Isolated computational or transcriptional errors will not generally indicate a lack of good faith in the preparation of a taxpayer's return.

The law in this matter is clear-taxpayer was required to pay its withholding taxes to the Department quarter monthly for the period at issue. However, it is undisputed from the record provided that this taxpayer's history of payment of these taxes had been without flaw prior to 1/Q/99. It is also undisputed that once advised of the requirement to pay quarter monthly, taxpayer did so immediately. I also note that although taxpayer, without problems, did its payroll and most of its tax filings using its own staff, it did have a certified public accounting firm prepare its quarterly and year end taxes, and that, without delay, had its outside accountant interact with the Department as soon as the Department communicated concerns about its tax payments. Thus, after reviewing the record in this matter and considering it in its totality, I conclude that there exists reasonable cause to abate the late payment penalties assessed in this matter.

WHEREFORE, it is my recommendation that the late payment penalty of \$17,085.69 be abated for reasonable cause and the Notice of Deficiency issued by the Department on February 16, 2001 regarding the late payment penalty be cancelled.

10/18/01

Mimi Brin
Administrative Law Judge